

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6831

BILL NUMBER: SB 426

DATE PREPARED: Jan 5, 2002

BILL AMENDED:

SUBJECT: Death Penalty.

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**FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (A) It provides that an individual less than 18 years of age may not receive a sentence of death.
- (B) It prohibits an individual from receiving a death sentence unless the individual personally killed the victim or intended that a killing occur.
- (C) It requires police to electronically record custodial interrogations.
- (D) It prohibits a court from overriding a jury recommendation against imposition of a death sentence.
- (E) It requires the Supreme Court's review of a death sentence to determine whether the sentence is appropriate compared to other capital cases (proportionality review).

Effective Date: July 1, 2002.

Explanation of State Expenditures: *Background:* There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The Office of the State Public Defender represents convicted offenders requesting indigent counsel in post conviction relief.

For the Office of the State Public Defender, the estimated staff costs are \$191,182 for a death penalty case, while the staff costs for a case involving life without parole is an estimated \$3,724. For the Office of the Attorney General, the staff costs are \$72,503 for a death penalty case and \$12,004 for a case involving life without parole. Besides the staff costs for legal representation, both the Department of Correction (DOC) and the Indiana State Police generally incur added overtime costs for providing security in death penalty cases around the time of the execution.

The costs to the Department of Correction would be greater if an offender is housed in DOC facilities for

a determinate sentence of between 45 and 65 years than if an offender is executed.

Impact: Provision A would both reduce the court's sentencing options if an offender is under 18 years of age and can no longer be sentenced to death for aggravated murder. The costs to the State General Fund depend on the type of sentence that is imposed. When the death penalty is imposed on a defendant, then the staff costs to the Office of the Attorney General and the State Public Defender's Office and reimbursement from the Public Defense Fund will be higher, but the length of stay in DOC facilities will be shorter. By contrast, when either a sentence of life without parole or a term of years is imposed, then the length of stay in DOC facilities will be longer, but the staff costs for the Office of the Attorney General and the State Public Defender and reimbursements from the State Public Defender Fund will be lower.

If the death penalty is no longer a sentencing option for aggravated murder for an offender under the age of 18, then the next most serious sentences would either be life without parole or a 65-year term of prison, the longest sentence that would be available if the sentence is a term of years. LSA staff compared the costs to the state of each sentencing option for a hypothetical 16-year-old. The offender would spend an average period of 11 years on death row before being executed if the death penalty was imposed and 32.5 years if an offender is sentenced to 65 years in prison. (Most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior.) An offender sentenced to life without parole would be incarcerated until the age of 77. Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5.2%. The following table presents these costs.

Costs to the State of Sentencing Options for a 16 -Year-Old Offender Sentenced for Aggravated Murder	
<u>Sentence</u>	<u>Net Present Value</u>
Death Penalty (No longer available under this bill)	\$493,760
Life Without Parole	\$574,730
65 Years with 50% Credit Time	\$407,788

Of 263 cases where information existed on defendants where the death penalty was originally requested, 16 were under the age of 18 when the death penalty was requested.

Provision E: The Supreme Court would adopt rules requiring the Supreme Court Administrator to compile a data base to assist the Supreme Court in conducting its proportionality review. This data report would include every murder case in which a request for the death penalty was filed after December 31, 1989.

The size and detail of the data base will depend on the rules that are established by the State Supreme Court. Between 1990 and 2001, prosecuting attorneys requested the death penalty 154 times.

Explanation of State Revenues:

Explanation of Local Expenditures: Provision A would reduce the costs to counties if the death penalty were no longer available for criminal defendants under the age of 18. The following compares the costs to a county for a case where the death penalty was requested and where the most serious sentence that can be

imposed would be life without parole.

Cost Components for Murder Trials:		
	Death Penalty	Life Without Parole
Attorneys and Related Costs*	\$107,804	\$27,370
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	\$219,346	\$50,314
*Net Costs After Reimbursement From Public Defense Fund		

Provision C: Many local law enforcement agencies record interrogations of criminal suspects. Local law enforcement agencies that do not currently electronically record these statements would have to purchase this equipment and have it available at the time of interrogation.

Provision D: Between 1981 and 1994, ten cases have been reported in which the judge has overridden the jury's decision to not impose the death penalty on a defendant. In addition, between 1978 and 1993, six cases have been reported where a judge imposed the death penalty after the jury was not able to make a recommendation. This provision would not allow these jury decisions to be overturned.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (draft copy); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>